

## Senate Bill No. 1106

### CHAPTER 32

An act to add Section 2954.11 to the Civil Code, relating to mortgages.

[Approved by Governor April 19, 1996. Filed with  
Secretary of State April 19, 1996.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1106, Leslie. Mortgages: prepayment penalties.

Existing law prescribes the circumstances when a prepayment penalty may be charged, and in certain cases the maximum amount thereof, with respect to loans secured by a mortgage or deed of trust on real property improved with one to 4 dwelling units.

This bill would, except as otherwise provided, provide that the borrower under any installment loan, as defined, secured by a deed of trust or mortgage or any other lien on residential real property of four units or less shall be entitled to prepay the whole or any part of the installment loan, plus interest, at any time, and that nothing in this provision shall preclude the borrower from becoming obligated to prepay a prepayment charge, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2954.11 is added to the Civil Code, to read:

2954.11. (a) As used in this section:

(1) "Open-end credit plan" has the meaning set forth in Regulation Z of the Federal Reserve System (12 C.F.R. 226.2(a)(20)).

(2) "Installment loan" means any loan specified in subdivision (h) extended under an installment loan feature.

(3) "Installment loan feature" means a feature of an open-end credit plan which provides for a separate subaccount of the open-end credit plan pursuant to which the principal of, and interest on, the loan associated with that subaccount are to be repaid in substantially equal installments over a specified period without regard to the amount outstanding under any other feature of the open-end credit plan or the payment schedule with respect to the other feature.

(b) (1) Except as otherwise provided by statute, the borrower under any installment loan shall be entitled to prepay the whole or any part of the installment loan, together with any accrued interest, at any time.

(2) With respect to any installment loan, nothing in this section shall preclude a borrower from becoming obligated, by an

agreement in writing, to pay a prepayment charge; but only a prepayment made within five years of the date the installment loan is made may be subject to a prepayment charge and then solely as herein set forth. An amount not exceeding 20 percent of the original principal amount of the installment loan may be prepaid in any one 12-month period without incurring a prepayment charge. A prepayment charge may be imposed on any amount prepaid in any 12-month period in excess of 20 percent of the original principal amount of the installment loan, which charge shall not exceed an amount equal to the payment of six months' advance interest on the amount prepaid in excess of 20 percent of the original principal amount of the installment loan.

(c) For purposes of subdivision (b):

(1) If the deed of trust or mortgage secures repayment of more than one installment loan, each of the installment loans shall be deemed to have been separately made on the date that the proceeds of the installment loan are advanced.

(2) If the outstanding balance of a loan advanced pursuant to an open-end credit plan thereafter becomes subject to an installment loan feature of the credit plan, the loan shall be deemed to have been made when the loan becomes subject to the installment loan feature, whether the feature was available at the borrower's option under original terms of the open-end credit plan or the feature thereafter became available upon modification of the original terms of the open-end credit plan.

(d) Notwithstanding subdivision (b), no prepayment charge may be imposed with respect to an installment loan subject to this section if any of the following apply:

(1) The residential structure securing the installment loan has been damaged to such an extent by a natural disaster for which a state of emergency is declared by the Governor, pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code, that the residential structure cannot be occupied and the prepayment is causally related thereto.

(2) The prepayment is made in conjunction with a bona fide sale of the real property securing the installment loan.

(3) The lender does not comply with subdivision (e).

(4) The term of the installment loan is for not more than five years and the original principal amount of the installment loan is less than five thousand dollars (\$5,000).

(e) (1) The lender receiving a borrower's obligation to pay a prepayment charge authorized by subdivision (b) shall furnish the borrower with a written disclosure describing the existence of the prepayment charge obligation, the conditions under which the prepayment charge shall be payable, and the method by which the amount of the prepayment charge shall be determined. If subdivision (f) provides the borrower with a right to rescind the installment loan

and the related obligation to pay a prepayment charge, the disclosure required by this subdivision shall also inform the borrower of this right to rescind, how and when to exercise the right, and where to mail or deliver a notice of rescission.

(2) The amount of, or the method for determining the amount of, the prepayment charge for an installment loan shall be set forth in the agreement governing the open-end credit plan.

(f) (1) The disclosure required by paragraph (1) of subdivision (e) shall be furnished when or up to 30 days before the borrower signs the agreement or other documents required by the lender for the installment loan, or no earlier than 30 days before nor later than 10 days following the making of the installment loan, if made without the borrower having to sign an agreement or other documentation, such as may be the case if the installment loan may be made on the basis of telephone or other discussions between the lender and the borrower not taking place in person. If the installment loan is made before the borrower has been furnished with the disclosure required by paragraph (1) of subdivision (e), the borrower shall have the right to rescind the installment loan and the related obligation to pay a prepayment charge by personally delivering or mailing notice to that effect to the lender, by first-class mail with postage prepaid, at the lender's location stated in its disclosure concerning the right to rescind within 10 days following the furnishing of the disclosure.

(2) If the disclosure required by paragraph (1) of subdivision (e) is included in the agreement or other document signed by the borrower for the installment loan, the disclosure shall be deemed given at that time. In other cases, the disclosure shall be deemed furnished when personally delivered to the borrower or three days after it is mailed to the borrower, first-class mail with postage prepaid, at the address to which billing statements for the open-end credit plan are being sent.

(3) The disclosure required by paragraph (1) of subdivision (e) may be separately furnished or may be included in the agreement or other document for the installment loan, provided that a copy of the disclosure that the borrower may retain is furnished to the borrower.

(4) If there is more than one borrower with respect to the open-end credit plan, a disclosure to any one of them pursuant to subdivision (e) shall satisfy the requirements of that subdivision with respect to all of them.

(g) If after an installment loan is made the lender receives the borrower's timely notice of the rescission of the installment loan in accordance with subdivision (f), the balance of the installment loan shall be transferred to the open-end subaccount of the open-end credit plan and the borrower shall be obligated to repay the amount under the same terms and conditions, and subject to the same fees and other charges, as would be applicable had the loan initially been



extended pursuant to the open-end credit plan or had the installment loan never been made.

(h) This section applies to any installment loan secured by a deed of trust or mortgage or any other lien on residential property of four units or less and Section 2954.9 does not apply to such installment loans. This section shall not apply to any loan that is subject to Section 10242.6 of the Business and Professions Code.

